

RICHARD J. LYONS

IBLA 85-303

Decided May 13, 1986

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-90488.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Filings

BLM may not reject a simultaneous oil and gas lease application for failure to disclose the name of the entity which provided assistance to the applicant, pursuant to 43 CFR 3112.2-4, where the entity merely provided parcel recommendations and cannot be said to have "formulated" the application within the meaning of 43 CFR 3112.0-5.

APPEARANCES: Richard J. Lyons, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Richard J. Lyons has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 28, 1984, rejecting his simultaneous oil and gas lease application drawn with priority for parcel WY-364 in the August 1984 simultaneous oil and gas lease drawing.

By notice dated October 19, 1984, BLM informed appellant that he was the successful applicant for parcel WY-364 and requested appellant to provide further information as to the "nature of [his] relationship" with National Energy Consultants Corporation (National Energy) of Hollywood, Florida, including a copy of any service agreement. 1/ The record contains a copy of the February 21, 1984, advisory agreement between appellant and National Energy. In its December 1984 decision, BLM rejected appellant's lease application because appellant had failed to disclose the

1/ Appellant's lease application did not disclose that appellant had any association with National Energy. However, in a Jan. 2, 1985, memorandum to the file, a BLM land law examiner explained that various applications in the August 1984 drawing had been identified "as having been submitted" by National Energy because of "its envelope -- white with a pre-printed label."

name of the entity which had provided "assistance" in submitting his application, in violation of 43 CFR 3112.2-4. BLM stated this "assistance" had taken the form of "providing * * * specific parcel recommendations." 2/

In his statement of reasons for appeal, appellant contends National Energy "did very little [work]" in preparing his lease application: "I had to fill out the filing cards by myself and it was my choice of which parcel to choose and how many." 3/

[1] The applicable regulation 43 CFR 3112.2-4, provides:

Any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program shall indicate on the lease application the name of the party or filing service that provided assistance.

Failure to comply with 43 CFR 3112.2-4 properly results in rejection of the lease application, under 43 CFR 3112.5-1(a). John G. O'Leary, 86 IBLA 131 (1985); Carl S. Matuszek, 86 IBLA 124 (1985).

In Ronald Valmonte, 87 IBLA 197 (1985), we concluded on facts similar to those herein that merely providing parcel recommendations to a lease applicant did not constitute "assistance" within the meaning of 43 CFR 3112.2-4, thus requiring the disclosure of the name of the entity providing that assistance on the lease application. We based this conclusion on the fact that,

2/ BLM explained that:

"One of the critical criteria in determining whether assistance falls under the ambit of 'filing service assistance' is the degree of choice in parcel selection exercised by the client. Where assistance is limited to providing evaluations of parcels, and where the client exercises complete choice regarding which parcels, how many parcels, etc., are selected, we would not consider that 'filing service assistance.' Where, however, that degree of choice is not provided, where the assistance consists of a finite list of recommended parcel numbers, there is the clear implication that there is little or no choice on the part of the client, and that is a sufficient criterion for determining 'filing service assistance.'"

(Emphasis added.)

3/ Appellant also submits an Aug. 7, 1984, letter from National Energy addressed "Dear Client" which states:

"Enclosed please find your new filing cards for the August 1984 filing period * * *. It is important to note, all applications must be filled out in pencil, as indicated, and sign your name in pen. Keep in mind, all filing cards and application's fees must be into the B.L.M. by 4:00 P.M., August 21, 1984." The letter also indicates three parcel recommendations, which were the only parcels noted on appellant's lease application.

while at one time the regulation which defined the term "any person or entity in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program," i.e., 43 CFR 3100.0-5(d) (1982), covered entities which "offer advice on formulation or preparation [or] mail, deliver [or] receive mail," this phrase was deleted in the revised and repromulgated regulation, i.e., 43 CFR 3112.0-5 (48 FR 33678 (July 22, 1983)). The latter regulation provides that the term currently means:

[T]hose enterprises, commonly known as filing serves, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration. All other services such as general secretarial assistance or general geologic advice whether or not it is specifically related to Federal lease parcels or leasing, are excluded from this definition. [Emphasis added.]

Id. In Valmonte, we concluded that the Department, by amending the regulation, had clearly meant to exclude entities which provided advice, in the form of parcel recommendations, to lease applicants, despite contrary language in the preamble to the amended regulation and an August 19, 1983, Federal Register notice, cited by BLM herein.

The advisory agreement in the present case is similar to the agreement in Valmonte. Under the agreement, appellant agrees to pay National Energy \$ 2,400 for 10 "recommendations." The agreement states that the fee is for "advisory services," and that National Energy will, during "[e]ach filing period, * * * forward to the Client parcel recommendations." Filing fees are "to be borne by Client." In addition, the August 1984 letter to appellant, noted above, indicates National Energy provided appellant with a blank lease application and an envelope addressed to BLM, in addition to the parcel recommendations. The record also contains a copy of the check used to pay appellant's filing and rental fees, which was appellant's personal check. There is no evidence of any other filing assistance provided by National Energy. In Valmonte, we concluded on similar facts that the entity therein could not be said to have either signed, formulated, prepared, or otherwise completed or filed the applicant's lease application, under 43 CFR 3112.0-5. 4/ The same is true in the present case.

Therefore, we conclude that BLM improperly rejected appellant's lease application where appellant was not required to disclose the name of National Energy on his lease application under 43 CFR 3112.2-4.

4/ In Valmonte, the Board declined to hold that the entity therein had formulated the application because the applicant, by virtue of the parcel recommendations, was presented with no choice over parcel selection. We stated that the fact the applicant had chosen to apply for all of the recommended parcels, "should not be permitted to obscure the fundamental reality that this was his free choice." Ronald Valmonte, supra at 202.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to BLM.

C. Randall Grant, Jr.
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

Bruce R. Harris
Administrative Judge.

